

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

INTERNATIONAL UNION OF OPERATING)		
ENGINEERS, LOCAL 2, AFL-CIO,))	
)	
Petitioner,))	
)	
v.))	Public Case No. R 92-011
)	
ST. LOUIS HOUSING AUTHORITY,))	
)	
Respondent,))	
)	
and))	
)	
CARPENTERS' DISTRICT COUNCIL))	
OF ST. LOUIS,))	
)	
Intervenor.))	

JURISDICTIONAL STATEMENT

The International Union of Operating Engineers, Local 2, filed a representation petition with the State Board of Mediation on March 9, 1992 seeking to represent certain employees of the St. Louis Housing Authority, specifically "All lead maintenance mechanics and maintenance mechanics, maintenance engineers aides, warehouse personnel, lead exterminators and exterminators, and Heating and Ventilation and Air Conditioning Technicians." A preliminary conference was held on April 17, 1992, whereupon it was determined that a question existed concerning the supervisory status of certain employees in the requested unit. Additionally, the Carpenters Union was granted intervenor status based on a 10% showing of interest. A hearing was held on May 5, 1992 at which representatives of the Operating Engineers, the Carpenters and the Housing Authority were present. The case was heard by State Board of Mediation Chairman Mary L. Gant, Employer Member Pamela S. Wright and Employee Member Donald N. Kelly. The State Board of Mediation is authorized to hear and decide issues

concerning appropriate bargaining units by virtue of Section 105.525 RSMo 1986. At the hearing, the parties were given full opportunity to present evidence. The Board, after a careful review of the evidence, sets forth the following findings of fact and conclusions of law.

FINDINGS OF FACT

The St. Louis Housing Authority operates public housing developments in the City of St. Louis. Some of these developments are administered directly by the Housing Authority while others are administered by independent contractors.

The maintenance of the developments controlled by the Housing Authority is apportioned into three separate divisions: Housing Management, Central Maintenance and Facilities. The maintenance employees in the Housing Management Division are assigned to a specific development. The maintenance employees in the Central Maintenance Division are exterminators, small engine repair employees, appliance repair employees and maintenance employees who work where needed. The maintenance employees in the Facilities Division are the elevator repair employees, boiler repair employees and the heating, ventilation and air conditioning technicians. The Director of the Division of Housing Management is Dallas Parks; Central Maintenance is headed by Tye Preston; and Facilities is headed by Malcolm Murphy. In the Housing Authority's organizational structure, the Executive Director is over Parks who is over Preston and Murphy. There is also a General Housing Manager who reports to Parks. Underneath the General Housing Manager are the development managers, also known as housing managers. They are the highest ranking employees at each housing development and oversee the employees who work there, to wit: maintenance personnel, custodial staff, and administrative personnel.

There are two classifications of maintenance personnel who work at the various developments: maintenance mechanics and lead maintenance mechanics. There are 31 maintenance mechanics and 6 lead maintenance mechanics. The following chart identifies where these maintenance personnel work, how many work there, and the number of units (i.e. apartments) in each development:

<u>Development</u>	<u># of Maintenance Employees</u>	<u># of Units in Development</u>
Blumeyer Village	6 maintenance mechanics 1 lead maintenance mechanic	1162 units
Darst-Webbe	5 maintenance mechanics 1 acting lead maintenance mechanic	850 units
Clinton Peabody	7 maintenance mechanics 1 lead maintenance mechanic	657 units
Vaughn	2 maintenance mechanics 1 lead maintenance mechanic	668 units
James House	1 maintenance mechanic no lead maintenance mechanic	140 units
LaSalle Park	2 maintenance mechanics 1 lead maintenance mechanic	140 units
Scattered Sites ¹	8 maintenance mechanics 1 lead maintenance mechanic	420 units

As the foregoing chart indicates, a lead maintenance mechanic works at six of the seven aforementioned developments (the exception being the James House Development).

At issue here is whether the six lead maintenance mechanics are supervisors. The maintenance mechanics, both lead maintenance mechanics and (regular) maintenance mechanics, perform routine maintenance work on the units in their

¹ This is the name used by the Employer to identify a series of small developments which include Euclid Plaza, McMillan Manor, Kingsbury Terrace and Page Manor.

development. Specifically, they do carpentry and plumbing work, appliance repair and replace broken windows. They either work together on projects or separately, depending on the nature of the work. The maintenance mechanics spend all of their time performing these duties, while the lead maintenance mechanics spend about 70% of their time doing so.

The lead maintenance mechanics also have other job responsibilities in addition to those noted above. First, at the beginning of each day, lead maintenance mechanics are given work orders by their housing manager, or the lead maintenance mechanics pick up the work orders which are received, via computer, from the central office. These work orders determine what work needs to be done by the maintenance mechanics in the housing development. The work orders are either already prioritized by a data entry clerk at the central office or prioritized by the development manager. These work priorities are established pursuant to a written Housing Authority policy. Given the existence of this policy, lead maintenance mechanics are not required to make the determination whether a work order is urgent or routine. That determination has already been made by someone else. Once the lead maintenance mechanics assign this work, their only criteria is to keep the work load even and make sure the high priority work orders are handled. Second, after the work is assigned, the lead maintenance mechanics ensure that the maintenance mechanics perform it correctly. They do this by checking the completed work of the maintenance mechanics. Third, the lead maintenance mechanics handle the following paperwork: logging in work orders, filling out appliance report sheets, closing out the work orders and filling out service requests for equipment used in the maintenance mechanics' work. Additionally, lead maintenance mechanics, like the maintenance mechanics, are required to keep a daily log of work performed. The amount of time spent on the foregoing activities (i.e.

assigning work, checking to see that it is performed correctly and doing paperwork) varies from individual to individual. For example, Nathan Taylor, a lead maintenance mechanic at the LaSalle Park Development, spends 30% of his time on the foregoing activities while Elliott Moore, a lead maintenance mechanics at the Clinton Peabody Development, spends 25% of this time on the same activities.

In the event a maintenance mechanic is going to be absent from work, they will notify the development manager -- not the lead maintenance mechanic. The development manager also handles all leave and vacation requests from the maintenance mechanics.

The lead maintenance mechanics are not empowered to move (i.e. transfer) maintenance mechanics from one development to another, cannot authorize paid time off or overtime, and cannot pledge the (financial) credit of the Housing Authority.

With regard to evaluations, maintenance mechanics are evaluated annually, but it is unclear from the record who makes these evaluations. Earnest Scott, the development manager at Blumeyer, testified that the lead maintenance mechanic at his development evaluates the maintenance mechanics. In contrast, lead maintenance mechanics Taylor and Moore both testified they did not do annual evaluations of maintenance mechanics; their development manager did. The instant record does not contain any evaluations of maintenance mechanics completed by lead maintenance mechanics.

With regard to discipline, all demotions, suspensions and discharges are handled by the central office. As a result, lead maintenance mechanics are not authorized to issue same to maintenance mechanics. Additionally, insofar as the record shows, lead maintenance mechanics have not issued lesser forms of discipline such as reprimands, written warnings or sending an employee home. Development Manager Scott testified

that the lead maintenance mechanic at his development would recommend discipline only with his (i.e. Scott's) approval.

Concerning hiring, all hirings are handled through the central office. As a result, lead maintenance mechanics are not authorized to hire maintenance mechanics on their own volition. At some developments, the development manager may invite the lead maintenance mechanic to sit in on the initial job interviews, ask questions of the interviewees and make recommendations, all of which are then passed up the chain of command. Development Manager Scott testified such was the case at his development (Blumeyer). Lead maintenance mechanics Taylor and Moore testified that during the time they have been lead maintenance mechanics, three new employees have been interviewed and hired but they neither participated in the interviews nor made recommendations concerning who to hire. The instant record does not contain any specific instances where a lead maintenance mechanic recommended the hiring of a particular person.

With regard to wages and benefits, all maintenance mechanics are paid at pay grade 22 of the employer's 38 step salary schedule while lead maintenance mechanics are paid at pay grade 23. Both of these pay grades contain a range. The range for grade 22 is between \$18,000.00 and \$24,000.00. and the range for grade 23 is between \$18,700.00 and \$25,000.00. There is a 5% differential between pay grades. Not all lead maintenance mechanics are paid the same rate of pay. The pay received by the lead maintenance mechanics is not tied to the number of units at their particular housing development, the number of people in their crew or the amount of time spent performing "supervisory" type work. In theory, lead maintenance mechanics are paid 5% more than maintenance mechanics. In practice, some maintenance mechanics are paid more than lead maintenance mechanics. For example, the highest paid maintenance mechanic

(Irving Lloyd) makes \$3,000.00 more than lead maintenance mechanic Elliott Moore and \$1,000.00 more than lead maintenance mechanic James Hudson. The lead maintenance mechanics receive no fringe benefits different from or in addition to the maintenance mechanics.

CONCLUSIONS OF LAW

International Union of Operating Engineers, Local 2 petitioned to be certified as public employee representative of a bargaining unit comprised of certain maintenance employees employed by the St. Louis Housing Authority. At the hearing, the union's proposed bargaining unit was modified to delete a reference to "warehouse personnel" and to include the following classifications in addition to those contained in their original petition: "small appliance repair technician, lead maintenance person, maintenance person and small engine repair technician."² With these modifications to their original petition, the Petitioner's requested unit is as follows:

All lead maintenance mechanics and maintenance mechanics, maintenance engineer aides, lead exterminators and exterminators, heating, ventilation and air conditioning Technicians, small appliance repair technician, lead maintenance person, maintenance persons and small engine repair technician.

Some confusion exists over the size of this proposed bargaining unit because the Petitioner believes there are 60 employees in it while the employer believes there are 40 employees. We believe there are about 60 employees in the proposed bargaining unit, with about 40 being maintenance employees.³ In our opinion, the confusion is attributable to the fact that Petitioner's Exhibit 2 contains the names of about 40 employees. However, this exhibit does not contain the names of all employees included in the petitioner's proposed bargaining unit.

² See Transcript, p. 161.

³ See Transcript, p. 98.

An appropriate bargaining unit is defined by Section 105.500(1) RSMo 1986 as:

A unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned.

Other than the foregoing question concerning the number of employees in the petitioner's proposed unit, the only dispute raised by the employer with the composition of the aforementioned bargaining unit concerns the inclusion of the lead maintenance mechanics which it asserts are supervisors. As a practical matter, the employer's question concerning the appropriateness of including the lead maintenance mechanics in the bargaining unit is subsumed into their other question concerning their possible supervisory status. That being so, our determination herein concerning whether the lead maintenance mechanics are supervisors will be dispositive of whether they are included in the bargaining unit. With this caveat, we therefore held that the above-referenced unit is an appropriate unit within the meaning of the Missouri Public Sector Labor Law.

As just noted, at issue here is whether the six lead maintenance mechanics are supervisors.⁴ The employer contends that they are, while the union disputes this assertion.

Although supervisors are not specifically excluded from the coverage of the Missouri Public Sector Labor Law, case law from this Board and the courts have carved out such as exclusion. See Golden Valley Memorial Hospital v. Missouri State Board of Mediation, 559 S.W.2d (Mo.App. 1977) and St. Louis Fire Fighters Association, Local 73 v. City of St. Louis, Case No. 76-013 (SBM 1976). This exclusion means that

⁴ While the employer also argues that the lead maintenance mechanics are "managerial" employees, it is clear from the context of its usage in the employer's brief that the employer uses the term "managerial" as a synonym for "supervisor". That being the case, we will not be addressing the question of whether the lead maintenance mechanics are "managerial" employees independent of whether they are supervisors.

supervisors cannot be included in the same bargaining unit as the employees they supervise. Since a dispute exists here as to whether the lead maintenance mechanics supervise the maintenance mechanics, it is necessary for us to determine if such is, in fact, the case.

In making this decision, this Board has historically considered the following factors:

- (1) The authority to effectively recommend the hiring, promotion, transfer, discipline, or discharge of employees.
- (2) The authority to direct and assign the work force, including a consideration of the amount of independent judgment and discretion exercised in such matters.
- (3) The number of employees supervised, and the number of actual persons exercising greater, similar or lesser authority over the same employees.
- (4) The level of pay including an evaluation of whether the supervisor is paid for a skill or for supervision of employees.
- (5) Whether the supervisor is primarily supervising an activity or primarily supervising employees.
- (6) Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees.⁵

We will apply these factors here as well. Not all of these criteria need to be present to be found supervisory. Rather, in each case the inquiry is whether these criteria are present in sufficient combination and degree to warrant the conclusion that the position is supervisory.

Applying these criteria to the lead maintenance mechanics at issue here, we conclude that on balance they do not meet this supervisory test. Our analysis follows.

⁵ See, for example, City of Sikeston, Case No. R 87-012 (SBM 1987).

To begin with, we find that the lead maintenance mechanics recommend few of the procedures listed in factor (1) above, namely hiring, firing, disciplining and/or evaluating employees.

With regard to hiring, we note at the outset that the development manager at Blumeyer (Scott) has included his lead maintenance mechanic in the initial step of the hiring process. Specifically, Scott invited his lead maintenance mechanic to participate in interviewing job applicants. Additionally, the lead maintenance mechanic at Blumeyer has also apparently made a recommendation to the development manager concerning who to hire. Be that as it may, this evidence is insufficient to support a finding that all of the lead maintenance mechanics interview job applicants and recommend who to hire, especially when the record indicates that lead maintenance mechanics Taylor and Moore have not participated in interviews or made hiring recommendations on three occasions when employees were hired. We therefore find that the lead maintenance mechanics, as a class, do not either hire on their own volition or effectively recommend same. In so finding, it appears to us that the employer's hiring process is managed by its central office. That being so, it is not necessary to the hiring process that lead maintenance mechanics be involved in the interviewing of applicants or recommending who to hire.

With regard to firing, it is undisputed that the lead maintenance mechanics do not have the authority to discharge maintenance mechanics on their own volition. Discharges, like hirings, are handled by the central office.

With regard to discipline, the development manager at Blumeyer (Scott) indicated his lead maintenance mechanic is empowered to initiate a written reprimand. However insofar as the record shows, none of the lead maintenance mechanics have ever actually imposed such discipline.

Concerning evaluations, we note that maintenance mechanics are evaluated on an annual basis, but it is unclear from the record who does the evaluating. While the

lead maintenance mechanic apparently does the evaluating at Blumeyer, lead maintenance mechanics Taylor and Moore do not evaluate the maintenance mechanics at their development - the housing manager does. Since the record does not contain any completed evaluations, there is not enough evidence to support a finding that the lead maintenance mechanics formally evaluate the maintenance mechanics. While the lead maintenance mechanics informally check on the work of the maintenance mechanics, the wages of the maintenance mechanics are not affected in any way by the lead maintenance mechanics' assessment of their work performance. Finally, lead maintenance mechanics do not make decisions that affect the promotional opportunities of the maintenance mechanics.

The foregoing convinces us that while the lead maintenance mechanics may sometimes be consulted in matters of hiring and lower level discipline by the development manager, they certainly are not an indispensable party in the employer's hiring or disciplinary decisions. Every hiring or discipline decision they could conceivably make would then be taken up the employer's chain of command for further action.

Attention is now turned to factor (2) above. There is no dispute that the lead maintenance mechanics disseminate (i.e. pass out) work orders to the maintenance mechanics on a daily basis. Thus, they assign them work. In and of itself though, this factor is not sufficient to make them supervisors. The assignment of work orders here is a routine task. They do not determine what work is performed; the central office does. Likewise, they do not make decisions about the priority of a work order; that is also done for them at the central office. The lead maintenance mechanics have only to equalize the work load among all the maintenance mechanics, including themselves, and ensure that the projects marked "urgent" get immediate attention.

Additionally, the lead maintenance mechanics may not order employees to work overtime, move (or transfer) employees from one housing development to another or

proceed on an emergency project without approval. All of these directions must come from someone at a higher level of authority than the lead maintenance mechanic.

Next, with regard to factor (3), the record indicates that the number of employees "supervised" varies in each development depending on the size of the development. The crews range in size from two maintenance mechanics plus the leadsman at Vaughn and LaSalle to eight plus the leadsman at the location designated "scattered sites". In our view, none of these crew sizes are large enough to raise any "red-flags" concerning the number of employees overseen.

The evidence presented on the second part of the third factor, the number of other persons exercising greater, similar or lesser authority with respect to the same employees, demonstrated that there are a number of layers of authority at the Housing Authority that exercise greater authority over the maintenance mechanics than the leads do, namely the Development Manager, the General Housing Manager, the Director of Housing and finally, the Executive Director. Practically speaking, the lead maintenance mechanics are at the bottom of the employer's hierarchy in terms of exercising authority and there is an entire supervisory and administrative structure over them.

With regard to the level of pay (factor 4), the evidence showed that while in theory lead maintenance mechanics are paid 5% more than the maintenance mechanics, in practice some are and some are not. In fact, in some instances maintenance mechanics are paid substantially more than the leads. While the great disparity in pay between one maintenance mechanic (Irving Lloyd) and all the other maintenance mechanics, including leads, can be attributed to his unique employment history, there are still other maintenance mechanics who are paid more than the leads. For example, maintenance mechanics George Singleton, Maurice Hunt, and Joseph Leonard make more than lead Nathan Taylor. Additionally, due to the way in which the pay grades are structured, a maintenance mechanic can make more than a lead maintenance mechanic on the same crew. This means that the employer does not

consistently pay lead maintenance mechanics more than the maintenance mechanics. In our view, the extra 5% that leads theoretically receive can just as easily be viewed as extra compensation for the additional paperwork performed as for any true supervisory functions.

Attention is now turned to factor (5). Oftentimes, maintenance mechanics do not work in the same place as the lead maintenance mechanic. For example, a lead may work on the 13th floor of a building while a maintenance mechanic is on the 14th floor. A natural consequence of this arrangement is that the lead maintenance mechanic does not always oversee the maintenance mechanics in person as they perform their maintenance work. Instead, they check it after it has been performed. This leads us to conclude that the lead maintenance mechanics primarily supervise the maintenance work activity. The lead maintenance mechanics' functions are directed at the performance of the job, not the supervision of employees.

What we have just described is the classic example of a leadworker or working supervisor (i.e. someone who supervises a work activity). The lead maintenance mechanics spend about 30% of their time assigning work, checking on it after it is performed and doing paperwork and about 70% of their time doing their own mechanical duties. This means that the lead maintenance mechanics spend the vast majority of their time performing maintenance work similar or identical to that performed by the maintenance mechanics they work with. We therefore hold that while the lead maintenance mechanics oversee the maintenance mechanics on a day-to-day basis, they do not possess sufficient supervisory authority in such combination and degree to make them supervisors.

DECISION

It is the decision of the State Board of Mediation that the lead maintenance mechanics at issue here are not supervisory employees. They are therefore included in the bargaining unit found appropriate.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation, or its designated representative, among the employees in the aforementioned bargaining unit, as early as possible, but not later than thirty days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during the period because of vacation or illness. Ineligible to vote are those employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election. Those eligible to vote shall vote whether or not they desire to be represented for the purpose of exclusive recognition by International Union of Operating Engineers, Local 2 or the Carpenters District Council of St. Louis.

It is hereby ordered that the employer shall submit to the Chairman of the State Board of Mediation, as well as to the both unions, within fourteen (14) days from the date of receipt of this decision, an alphabetical list of names and addresses of employees in the agreed upon bargaining unit who were employed during the payroll period immediately preceding the date of this decision.

Signed this 17th day of July, 1992

STATE BOARD OF MEDIATION

(SEAL)

/s/ Mary L. Gant
Mary L. Gant, Chairman

/s/ Pamela S. Wright
Pamela S. Wright
Employer Member

/s/ Donald N. Kelly
Donald N. Kelly
Employee Member